POLICY ASSOCIATION
The Association of Senior Human Resource Executives

March 28, 2008

Office of the Executive Secretary
National Labor Relations Board
1099 14th Street, NW.
Room 11600
Washington, DC 20570-0001

Re: Proposed Rule Concerning Joint Petitions for Certification Consenting to an Election

Dear Sirs:

We appreciate this opportunity to comment on the Board's proposed rule allowing for the joint filing of a petition by an employer and a union authorizing a representation election within 28 days with no requirement of a showing of interest by the employees. As noted herein, the Association's membership has a mixed view of this proposal, but should the Board proceed, we have set forth what we think is an important addition to the proposed rule that we urge the Board to adopt.

HR Policy Association brings together the chief human resource officers of more than 240 of the largest corporations in the United States. Representing nearly every major industry sector, HR Policy members have a combined market capitalization of more than $7.5 trillion and employ more than 18 million employees world wide. These companies generally believe that whether or not a unit of employees is to be represented by a union is a decision that should be made by those employees themselves, after hearing views on as many sides of the issue as possible. The American industrial relations system is

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founded on this principle. While it is not without flaws, the best way for resolving questions concerning representation continues to be by employees expressing their opinion in a secret-ballot election conducted by the Board.

The member companies of the Association have a divided reaction to the proposals. Some member companies believe that the proposed rule is an abandonment of the principle of employee free choice which is at the heart of the National Labor Relations Act. These companies are very concerned that, even though the employees would make the ultimate determination through a Board-supervised secret ballot election, the genesis of such a procedure is not employee interest in being represented but rather an agreement between the employer and the union. For these companies, the absence of even a minimal showing of interest (that may or may not equal the existing 30 percent standard) undermines the underlying premises of the Act. Also troubling is the fact that any such election must take place within 28 days, even though in *Dana*, for example, the Board provided a 45 day period to challenge a recognition based on authorization cards.

Other member companies view the proposal as a potentially useful mechanism available to employers and unions that mutually agree that an expeditious resolution of the representation question through a mechanism that preserves the confidentiality of a secret ballot election is desirable. To these member companies, this is preferable to other informal mechanisms, such as a card check recognition, which lacks such confidentiality and brings about, inter alia, both confusion on the part of the employee and possible coercion. However, it should be emphasized that, for these companies, the manifestation

of employee choice through the Board-supervised secret ballot election is critical to their support for the proposal. Moreover, they view the element of voluntary agreement by both the employer and the union as equally critical in ensuring that issues such as the appropriate unit description, classification or employees and other essential matters are not in dispute.

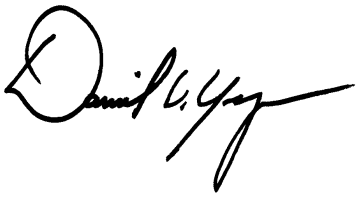
Because of this lack of unanimity, the Association neither supports nor opposes the proposal. However, we do suggest an alternative or amendment to the proposal that would be strongly supported.

Under current Board procedures, one instance where no showing of employee interest is necessary is the filing of an RM petition by an employer when one or more individuals or labor organizations present a claim to be recognized as the exclusive bargaining representative. Unfortunately, the Board has taken a constrained view of what represents a "claim to be recognized." The Board refuses to include within such claims instances where a union insists that an employer agree to a card check certification but fails to "make a present demand for recognition," even when the union exerts substantial external pressure upon the employer to agree to a card check. In *New Otani Hotel & Garden*, 331 NLRB 1078 (2000) , the Board dismissed the employer's petition, despite a four-year campaign by the union involving, among other things, picketing and an attempt to punish the employer with an economic boycott until it agreed to recognize the union upon acquisition of card majority status.

If the Board decides to promulgate the proposed rule, we would strongly urge that the procedure be available to an employer that is being subjected to pressure by a union to agree to a card check recognition procedure, even though the union has not made a present demand for recognition. As demonstrated in *New Otani* and numerous other situations, such pressures—typically applied through a so-called "corporate campaign"—can be enormously disruptive to the employer's operations as well as its employees, often posing a long-term threat to the economic viability of the enterprise. An employer and its employees should be able to resolve such disputes by submitting the union representation issue to the employees through a Board-conducted secret ballot election. We do not believe in this case that the Board should differentiate between a demand for recognition and a demand for agreement on a card check recognition process. Unions should not be allowed to highjack the election process by masquerading behind demands for agreement on a card check recognition process.

Thank you for this opportunity to provide the Association's views concerning the proposal.

Sincerely,



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